UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

**FILED**

FEB 22 2006

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| MILES W. WHITNEY, Jr., | No. 05-15546 |
| Plaintiff - Appellant, | D.C. No. CV-04-01397-KJD |
| v. | |
| MOTOR CARGO, | MEMORANDUM* |
| Defendant - Appellee. | |

Appeal from the United States District Court
for the District of Nevada
Kent J. Dawson, District Judge, Presiding

Submitted February 13, 2006**

Before:     FERNANDEZ, RYMER, and BYBEE, Circuit Judges.

Miles W. Whitney, Jr. appeals pro se from the district court's judgment

dismissing his action challenging his employer's decision to withhold federal

income taxes from his wages contrary to his instructions. We have jurisdiction

pursuant to 28 U.S.C. § 1291. We review de novo a dismissal for failure to state a

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\*       This disposition is not appropriate for publication and may not be
cited to or by the courts of this circuit except as provided by 9th Cir. R. 36-3.

\*\*       The panel unanimously finds this case suitable for decision without
oral argument. *See* Fed. R. App. P. 34(a)(2).

claim, *Bright v. Bechtel Petroleum, Inc.*, 780 F.2d 766, 768 (9th Cir. 1986), and

we affirm.

The district court properly dismissed Whitney's action alleging that Motor

Cargo improperly withheld taxes from his wages, because Motor Cargo was

required by law to do so. *See* 26 U.S.C. § 3402. Furthermore, an employer is not

liable to any person for the amount of tax withheld. *See* 26 U.S.C. § 3403; *Bright*,

780 F.2d at 770 (holding that suits by employees against employers for tax

withheld are statutorily barred).

We deny Whitney's motion to supplement the record.

We grant Motor Cargo's motion for attorney's fees on appeal. The

determination of an appropriate amount of fees on appeal is referred to the court's

special master, Appellate Commissioner Peter L. Shaw, who shall conduct

whatever proceedings he deems appropriate, and who shall have authority to enter

an order awarding fees. *See* 9th Cir. R. 39-1.9. The order is subject to

reconsideration by the panel. *Id.*

**AFFIRMED**